

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

2010 JUL 21 P 3:57

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

AZ CORP COMMISSION
DOCKET CONTROL

In the matter of:

DOCKET NO. S-20751A-10-0300

ETHAN STURGIS DAY and THERESA
DAY, respondent and spouse,

NOTICE OF OPPORTUNITY FOR HEARING
REGARDING PROPOSED ORDER TO
CEASE AND DESIST, ORDER FOR
RESTITUTION, ORDER FOR
ADMINISTRATIVE PENALTIES AND
ORDER FOR OTHER AFFIRMATIVE
ACTION

SILVERSPRINGS REAL ESTATE
DEVELOPMENT & INVESTMENTS,
L.L.C., formerly known as SILVERLEAF
REAL ESTATE DEVELOPMENT &
INVESTMENTS, L.L.C., a revoked Nevada
limited liability company,

DESERT OASIS CONDOMINIUM, L.L.C.,
a revoked Nevada limited liability company,

THE MAYAN RESORT & CASINO,
L.L.C., a revoked Nevada limited liability
company,

Respondents.

Arizona Corporation Commission

DOCKETED

JUL 21 2010

DOCKETED BY

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NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents ETHAN STURGIS DAY, SILVERSPRINGS REAL ESTATE DEVELOPMENT & INVESTMENTS, formerly known as SILVERLEAF REAL ESTATE DEVELOPMENT & INVESTMENTS, L.L.C., DESERT OASIS CONDOMINIUM, L.L.C and THE MAYAN RESORT & CASINO, L.L.C. ("Respondents") have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

I. JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II. RESPONDENTS

2. At all times relevant, ETHAN STURGIS DAY ("DAY") was a resident of Arizona.

3. SILVERSPRINGS REAL ESTATE DEVELOPMENT & INVESTMENTS, L.L.C., formerly known as SILVERLEAF REAL ESTATE DEVELOPMENT & INVESTMENTS, L.L.C., (together referred to as "SILVERLEAF"), was formed in Nevada on May 19, 2005 and was revoked effective June 1, 2010. DAY is identified as the manager.

4. DESERT OASIS CONDOMINIUM, L.L.C. ("DESERT OASIS") was formed in Nevada on May 19, 2005 and was revoked effective June 1, 2009. DAY is identified as the manager.

5. The MAYAN RESORT & CASINO, L.L.C. ("THE MAYAN RESORT") was formed in Nevada on May 19, 2005 and was revoked effective June 1, 2009. DAY is identified as the manager.

6. At all times relevant, DAY conducted the business operations of SILVERLEAF, DESERT OASIS and THE MAYAN RESORT from an office located in Scottsdale, Arizona. SILVERLEAF, through DAY and other agents, communicated with investors, both by phone and mail, from offices located in Scottsdale, Arizona and Tucson, Arizona.

7. THERESA DAY was at all relevant times the spouse of DAY. THERESA DAY is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community. THERESA DAY may be referred to as "Respondent Spouse."

8. At all times relevant, DAY was acting for his benefit and for the benefit or in furtherance of his and Respondent Spouse's marital community.

III. FACTS

9. Beginning in May 2005 and continuing through June 2008, SILVERLEAF, through DAY and its agents, offered and sold unregistered securities in the form of investment contracts and promissory notes to more than 140 investors in an amount totaling approximately \$8,200,000.

10. At all times material hereto, DAY has not been registered as a securities salesman and SILVERLEAF, DESERT OASIS and THE MAYAN RESORT have not been registered as dealers.

11. SILVERLEAF was described to investors by DAY as a real estate development and investment company structured to handle the new and increasing demand for residential and commercial real estate development in Nevada.

12. Promotional materials developed by DAY and provided to investors described SILVERLEAF as a company that would provide complete real estate development and construction services and a company able to deliver quality projects and personalized service.

13. Promotional materials, promissory notes, deeds of trust and other documents provided to investors by DAY were all printed on the letterhead of SILVERLEAF.

14. According to promotional materials and "investor updates" provided to investors by DAY, SILVERLEAF had acquired 405 acres of real estate in West Wendover, Nevada to build a \$500 million mega casino/resort, 1,000 residential homes and a commercial center that was predicted to double West Wendover, Nevada's gaming industry and population within three years.

15. DAY informed investors that their funds would be used to develop the 405 acres of real estate purchased in West Wendover, Nevada to include the construction of the casino/resort, residential homes and the commercial center.

16. DAY informed investors that the investment opportunity being offered by SILVERLEAF was safe, bonded and insured for guaranteed completion and that investors' funds would be secured by deeds of trust.

1 17. DAY assured investors that their investment would not be "tied up" beyond 18 to 24
2 months and informed them that their investment was passive.

3 18. DAY informed investors that SILVERLEAF would be responsible for forming
4 partnerships with various companies to assist with and ensure the completion of the development
5 project.

6 19. Promotional materials identified the casino/resort to be built by SILVERLEAF as
7 The Mayan Resort & Casino, a 60,000 square foot casino and four star resort with a 25 story tower
8 including 400 rooms and 100 suites.

9 20. A sales brochure prepared by SILVERLEAF and supplied to investors that was
10 formulated in a question and answer format, provided the following information:

11 Q: What is the relationship between the Mayan Resort &
12 Casino and Silverleaf Real Estate Development and Investments,
LLC?

13 A: SilverLeaf is developing the Mayan Resort & Casino on 55
14 acres adjacent to the West Wendover Golf Course. The
15 relationship between The Mayan Resort & Casino and Phase I of
16 the SilverLeaf Condominium development (250 condominiums) is
17 that the developer is SilverLeaf Real Estate Developments and
18 Investments for both the Resort/Casino and Condominiums.
19 Initially the 250 condominiums that are being developed (on the
20 investors' trust deed land), are Phase 1 of a multiphase master plan
overall development project consisting of 880 condominiums to
include the Mayan Resort & Casino. The Condominiums are
being built to provide a housing base for the projected 1,800
Mayan Resort & Casino employees. SilverLeaf is identifying a
reputable and successful Las Vegas Casino Operator that will lease
the Casino operations of the Mayan Resort & Casino. (sic)

21 21. DAY was described to investors in promotional materials and on an internet website
22 maintained by SILVERLEAF as an individual who became a real estate pioneer in Rio Verde,
23 Arizona and who had been successful in developing and building seventy eight custom homes in
24 the Rio Verde area.

25 22. DAY was a signatory on each of the Respondents' bank accounts and was identified
26 as CEO of SILVERLEAF.

1 23. DAY was primarily responsible for all aspects of SILVERLEAF's daily business
2 operations including, but not limited to, contracting with construction consultants to assist in the
3 development of the Wendover project and communicating directly with investors regarding the
4 progress of the project and the status of investors' interest payments.

5 24. Although some of the approximately \$8,200,000 received from investors was used
6 to begin developing the real estate in West Wendover, Nevada, approximately \$4,100,000 of the
7 funds received from investors was paid by DAY from accounts in the names of SILVERLEAF and
8 DESERT OASIS to sales agents in the form of sales commissions.

9 25. Respondents failed to inform investors that DAY was paying approximately one half
10 of their investment amount to sales agents in the form of sales commissions.

11 26. Approximately \$875,000 of the amount received from investors was paid by DAY
12 from bank accounts in the names of SILVERLEAF and DESERT OASIS to investors in the form
13 of interest payments.

14 27. To date, investors have not received all of their promised returns or a return of their
15 principal investment amount.

16 28. The project in West Wendover was not completed and the real estate has been
17 foreclosed upon by the original bank lender.

18 29. Based upon instructions provided by DAY, investors wired their funds to a bank
19 account in the name of SILVERLEAF or DESERT OASIS. Subsequent to the receipt of funds
20 from investors, DAY provided investors with promissory notes printed on the letterhead of
21 SILVERLEAF.

22 30. The makers of the promissory notes forwarded to investors by DAY were DESERT
23 OASIS and THE MAYAN RESORT. DAY signed each of the promissory notes as manager for
24 DESERT OASIS and THE MAYAN RESORT.

25 31. The promissory notes set forth that investors would be paid interest at a rate of
26 twelve percent (12%) per annum. Investors were to receive an annual installment payment of

1 interest only, earned on the unpaid principal balance. The entire unpaid principal balance plus all
2 accrued interest was due to be paid to the investor no later than the date of completion of the
3 development project or 18 to 24 months as previously told to investors by DAY.

4 32. In addition to the payment of twelve percent interest and the repayment of principal,
5 the terms of the promissory note set forth that investors would receive an additional sum equal to
6 five percent (5%) of the amount invested, payable upon the completion of the project and receipt by
7 DESERT OASIS or THE MAYAN RESORT of the sale proceeds arising from the project.

8 33. According to the terms of the promissory notes, payment on each note would be
9 secured by a recorded deed of trust, in the name of each investor, on the real estate purchased in
10 West Wendover, Nevada.

11 34. Deeds of trust were forwarded to some investors by DAY. The deeds of trust were
12 printed on the letterhead of SILVERLEAF. The deeds of trust were not recorded in Elko County,
13 Nevada, the county where the property is located.

14 35. In fact, in January 2009, well after all of the funds from investors had been received,
15 DAY corresponded with at least one investor requesting the sum of \$600 for "legal and recording
16 fee's (sic) to ensure your Deed of Trust is recorded properly with the title company."

17 36. Respondents failed to inform investors that the real estate located in West
18 Wendover, Nevada was not owned by SILVERLEAF, DESERT OASIS or THE MAYAN
19 RESORT, but rather The Spirit of Wendover, L.L.C., an entity owned and controlled by DAY.

20 37. DAY used investor funds deposited into bank accounts in the names of
21 SILVERLEAF and DESERT OASIS for his own personal use and benefit including making cash
22 withdrawals, payments to his wife and children, payments to credit card companies for personal
23 expenses incurred and payments for expenses incurred on family vacations.

24 38. Respondents failed to inform investors that DAY used investor funds deposited
25 into bank accounts in the names of SILVERLEAF and DESERT OASIS for his own personal use
26 and benefit including making cash withdrawals, payments to his wife and children, payments to

1 credit card companies for personal expenses incurred and payments for expenses incurred on
2 family vacations.

3 **IV. VIOLATION OF A.R.S. § 44-1841**

4 **(Offer or Sale of Unregistered Securities)**

5 39. From on or about May 2005 and continuing through June 2008, Respondents offered
6 or sold securities in the form of investment contracts and promissory notes, within or from Arizona.

7 40. The securities referred to above were not registered pursuant to Articles 6 or 7 of the
8 Securities Act.

9 41. This conduct violates A.R.S. § 44-1841.

10 **V. VIOLATION OF A.R.S. § 44-1842**

11 **(Transactions by Unregistered Dealers or Salesmen)**

12 42. DAY offered or sold securities within or from Arizona while not registered as a
13 securities salesman pursuant to Article 9 of the Securities Act.

14 43. SILVERLEAF, DESERT OASIS and THE MAYAN RESORT offered or sold
15 securities within or from Arizona while not registered as dealers pursuant to Article 9 of the Securities
16 Act.

17 44. This conduct violates A.R.S. § 44-1842.

18 **VI. VIOLATION OF A.R.S. § 44-1991**

19 **(Fraud in Connection with the Offer or Sale of Securities)**

20 45. In connection with the offer or sale of securities within or from Arizona, Respondents
21 directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements
22 of material fact or omitted to state material facts that were necessary in order to make the statements
23 made not misleading in light of the circumstances under which they were made; or (iii) engaged in
24 transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon
25 offerees and investors. Respondents' conduct includes, but is not limited to, the following:
26

1 a) Misrepresenting to investors that payment on the promissory notes provided to
2 investors would be secured by a deed of trust, recorded in the name of each investor, on the real estate
3 located in West Wendover, Nevada;

4 b) Failing to inform investors that their funds were used by DAY for his own
5 personal use and benefit including making cash withdrawals, payments to his wife and children,
6 payments to credit card companies for personal expenses incurred and payments for expenses incurred
7 for family vacations;

8 c) Failing to inform investors that approximately \$4,100,000 of funds received
9 from investors was used by DAY to pay independent sales agents in the form of sales commissions;

10 d) Failing to inform investors that \$875,000 of funds received from investors was
11 used by DAY to make interest payments to investors.

12 46. This conduct violates A.R.S. § 44-1991.

13 **VII. REQUESTED RELIEF**

14 The Division requests that the Commission grant the following relief:

15 1. Order Respondents to permanently cease and desist from violating the Securities Act,
16 pursuant to A.R.S. § 44-2032;

17 2. Order Respondents to take affirmative action to correct the conditions resulting from
18 their acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. §
19 44-2032;

20 3. Order Respondents to pay the state of Arizona administrative penalties of up to five
21 thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

22 4. Order that the marital community of DAY and Respondent Spouse be subject to any
23 order of restitution, rescission, administrative penalties, or other appropriate affirmative action
24 pursuant to A.R.S. § 25-215; and

25 5. Order any other relief that the Commission deems appropriate.
26

VIII. HEARING OPPORTUNITY

Each respondent, including Respondent Spouse, may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If a Respondent or a Respondent Spouse requests a hearing, the requesting respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail sabernal@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

IX. ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if a Respondent or a Respondent Spouse requests a hearing, the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

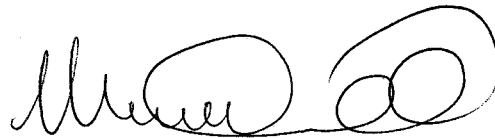
1 Additionally, the answering respondent must serve the Answer upon the Division. Pursuant
2 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a
3 copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007,
4 addressed to William W. Black.

5 The Answer shall contain an admission or denial of each allegation in this Notice and the
6 original signature of the answering respondent or respondent's attorney. A statement of a lack of
7 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not
8 denied shall be considered admitted.

9 When the answering respondent intends in good faith to deny only a part or a qualification
10 of an allegation, the respondent shall specify that part or qualification of the allegation and shall
11 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

12 The officer presiding over the hearing may grant relief from the requirement to file an
13 Answer for good cause shown.

14 Dated this 21st day of July, 2010.

A handwritten signature in black ink, appearing to read 'Mark Dinell', written over a horizontal line.

Mark Dinell
Assistant Director of Securities